



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street Arlington, MA 02476

**Board of Health Meeting Agenda
Ground Floor Conference Room
Arlington Senior Center
Wednesday, November 14, 2018
5:30 PM**

1. HEARING: Regulation to Ensure the Sanitary and Safe Operation of Adult-Use Marijuana Establishments and the Sale of Adult-Use Marijuana

Adjourn



Town of Arlington, Massachusetts

Regulation to Ensure the Sanitary and Safe Operation of Adult-Use Marijuana Establishments and the Sale of Adult-Use Marijuana

ATTACHMENTS:

	Type	File Name	Description
▢	Reference Material	Final-draft-Marijuana-nw_edits-10.31.2018.docx	REGULATION TO ENSURE THE SANITARY AND SAFE OPERATION OF ADULT-USE MARIJUANA ESTABLISHMENTS AND THE SALE OF ADULT-USE MARIJUANA



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

**REGULATION TO ENSURE THE SANITARY AND SAFE OPERATION OF
ADULT-USE MARIJUANA ESTABLISHMENTS AND THE SALE OF ADULT-USE
MARIJUANA**

A. Statement of Purpose and Authority:

Whereas, Massachusetts voters approved the regulation and the use and distribution of adult-use marijuana not medically prescribed on November 8, 2016 pursuant to Chapter 344 of the Acts of 2016, as amended by Chapter 55 of the Acts of 2017, an Act to Ensure Safe Access to Adult-use marijuana; and

Whereas, the prevention of the illegal sale and use of marijuana, particularly involving youth, is a public health priority; and

Whereas, the state regulation at 935 CMR 500.000 allows for lawful local oversight and regulation, including local fee requirements; and

Whereas, Chapter 55 of the Acts of 2017 specifically allows municipalities to “adopt ordinances and by-laws that impose reasonable safeguards on the operation of marijuana establishments” specifically related to “the time, place and manner of marijuana establishment operations and of any business dealing in marijuana accessories” provided that such restrictions “are not unreasonably impracticable and are not in conflict” with the state statute or regulations regulating marijuana sales.

Whereas, local oversight and inspection of adult-use marijuana establishments is within the legal authority of local boards of health to protect public health, safety and welfare; and

Whereas, the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect public health by any rational means.”¹

¹ Druzik et al v. Board of Health of Haverhill, 324 Mass. 129 (1949).

Now, therefore it is the intention of the Arlington Board of Health to regulate adult-use marijuana establishments and the sale of adult-use marijuana.

B. Definitions:

Unless otherwise indicated, terms used throughout this regulation shall be defined as they are in 935 CMR 500.000 and General Law Chapter 94G, §1. In addition, for the purposes of this regulation, the following words shall have the following meanings:

Adult-Only Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products or offer of services is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products as required by the Arlington Board of Health.

Board of Health: Town of Arlington Board of Health and its designated board of health agents.

Board of Health Agent: The Director of Public Health and any town employee designated by the board of health, which may include board of health staff, law enforcement officers, fire officials and code enforcement officers.

Business Agent: An individual who has been designated by the owner or operator of any adult-use marijuana establishment to be the manager or otherwise in charge of said establishment.

Edible Marijuana Products: A marijuana product that is to be consumed by humans by eating or drinking and is sold or made by a facility licensed as a Marijuana Establishment under 935 CMR 500.000.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

Marijuana: All parts of any plant of the genus cannabis, not excepted below, and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; clones of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in section 1 of chapter 94G of the General Laws.

“Marijuana” shall not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; hemp; or the weight of any other ingredient combined with adult-use marijuana to prepare topical or oral administrations, food, drink or other products.

Marijuana Accessories: Equipment, products, devices or materials of any kind that are intended or designed for use in ingesting, inhaling or otherwise introducing adult-use marijuana into the human body.

Marijuana Establishment: Any type of marijuana-related business licensed by the Cannabis Control Commission (CNB) pursuant to 935 CMR 500.050, including a marijuana cultivator, craft marijuana cooperative, marijuana product manufacturer independent testing laboratory, marijuana retailer, marijuana research facility, marijuana transporter, marijuana micro-business, or any other type of licensed marijuana-related business, except a medical marijuana treatment center.

Marijuana Establishment Agent Permit: A permit issued by the Board of Health, expiring on December 31st and to be renewed annually, which permits an eligible person to be employed by a Marijuana Establishment.

Marijuana Establishment Agent Permit Holder: Any employee at a Registered Marijuana Dispensary who applies for and receives a Establishment Agent Permit.

Marijuana Products: Products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces rolled marijuana products solely for the individual's own personal consumption or use) that is capable of making rolled marijuana products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Operating Permit Holder: Any person engaged in the cultivation, sale, distribution or delivery of marijuana who applies for and receives an operating permit, or any person who is required to apply for an operating permit pursuant to these regulations, or his or her business agent.

Minimum Legal Sales Age: The age an individual must be before that individual can be sold a marijuana product in the municipality.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including, but not limited to an owner, operator, manager, proprietor or person in charge of any establishment, business, cultivation property or retail store.

Self-Service Display: Any display from which customers may select marijuana or a marijuana-infused product without assistance from an establishment.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes adult-use marijuana products.

C. Marijuana Sales to Persons Under the Minimum Legal Sales Age Prohibited:

1. No person shall sell marijuana or permit marijuana, as defined herein, to be sold to a person under the minimum legal sales age; or give marijuana or marijuana products as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in the Town of Arlington is 21.
2. Each person selling or distributing marijuana or marijuana products as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth and showing that the purchaser is 21 years of age or older.
3. All retail sales of marijuana or marijuana products shall be face-to-face between the seller and the buyer and occur at the permitted location unless and until delivery of marijuana is authorized and licensed under state regulation and then, in strict compliance with all applicable rules and regulations as well as the age limitation set forth herein.

D. Marijuana Operating Permit:

1. No person shall sell, cultivate, deliver or otherwise commercially distribute marijuana or marijuana products, as defined herein, within the Town of Arlington without first obtaining a Marijuana Operating Permit issued annually by the Arlington Board of Health. Only owners of establishments with a permanent, non-mobile location in Arlington are eligible to apply for an operating permit at the specific location in the Town of Arlington and must meet the following application requirements:

- a. All applicants shall certify that they are in compliance with all local and state laws, regulations, bylaws, including proof of a current license with the CNB and be prepared to show proof if requested.
 - b. A marijuana delivery-only establishment, if authorized and licensed under state regulation shall not be required to have a permanent non-mobile location but shall have an in-state permanent business office address and contact information available. Upon request, the establishment must share information about the current location and destination of its employees with the Arlington Board of Health.
2. No person shall gift marijuana or marijuana products to a consumer contingent upon the sale of any other products.
3. No person shall accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides marijuana or a marijuana product without charge.
4. As part of the Marijuana Operating Permit application process, the applicant will be provided with the Town of Arlington regulation. Each applicant is required to sign a statement declaring that the applicant has read this regulation and that the applicant is responsible for instructing all employees who will be responsible for marijuana sales about federal, state and local laws regarding the sale of marijuana, including this regulation.
5. A separate Marijuana Operating Permit, displayed conspicuously, is required for each Marijuana Establishment, the fee for which shall be determined by the Arlington Board of Health.
6. A Marijuana Operating Permit is non-transferable. Each new owner of a Marijuana establishment must apply for a new permit.
7. Issuance of a Marijuana Operating Permit shall be conditioned on an applicant's consent to periodic inspections of the Marijuana establishment, including any off-site location within the jurisdiction of the Board of Health, where business is conducted relating to the manufacture or sale of marijuana at the Marijuana establishment.

8. A Marijuana Operating Permit will not be renewed if the permit holder has failed to pay all fines issued and the time to appeal the fines has expired without an appeal having been filed and/or the permit holder has not satisfied any outstanding permit suspensions. If a violation was enforced by non-criminal dispositions, any appeal shall be taken pursuant to G.L. c. 40, §21D.
9. A Marijuana Operating Permit may be subject to non-renewal if the establishment has sold or otherwise supplied marijuana or a marijuana product to any person under the minimum legal sales age two or more times within the previous 12 months and either the time to appeal has expired without an appeal having been filed or the appeals were unsuccessful. The permit holder may request a hearing pursuant to this regulation prior to non-renewal. Hearing will be held pursuant to Section L of this regulation.
10. No person under the minimum legal sales age shall be permitted to enter an establishment with a Marijuana Operating Permit except, if the establishment is co-located with a medical marijuana treatment center as defined in 935 CMR 500.002. Those individuals in possession of a registration card demonstrating that he or she is a registered qualifying patient with the Medical Use of Marijuana Program, (105 CMR 725.000 Implementation of the Act for the Humanitarian Medical Use of Marijuana, or 935 CMR 501 Medical Use of Marijuana) may enter.
11. A retail marijuana establishment shall sell primarily marijuana, edible marijuana products and marijuana accessories. The sale of other products must be merely incidental. A retail marijuana establishment is prohibited from holding a tobacco sales permit, retail or wholesale food permit or a license that permits the sale or distribution of any alcoholic beverage in any form.
12. All Marijuana Operating Permits expire on December 31.
13. Each applicant is required to provide proof of a current Certificate of Registration to Operate a Marijuana Establishment, issued by the Cannabis Control Commission, or other authorized agency, before a RMD Operating Permit can be issued.
14. The Board of Health will hold a public hearing for the applicant to speak regarding their initial application. The Board of Health may require the applicant to furnish additional information regarding their application before voting to grant or deny the Marijuana Establishment Operating Permit. The Board will not hold a public hearing for renewal applications.
15. Each Marijuana Establishment must hold an annual community meeting to provide abutters and community residents with an opportunity to comment on the Marijuana Establishment's operating practices, policies and plans. The community meeting shall be advertised by the Marijuana Establishment through direct mail or other written communication to abutters. A notice of the same shall be advertised in the local newspaper. A report outlining the attendance, comments received,

and proposed responses and plans to address the comments shall be submitted to the Board with the renewal application.

16. Marijuana Establishments are prohibited from using self-service displays, vending machines or Non-Residential Roll-Your-Own machines. All retail sales of marijuana must be face-to-face between the Dispensary Agent and the Card Holder and occur at the permitted location, unless the Card Holder is the proper recipient of home delivery in accordance with 105 CMR 725.000.
17. As a condition of Marijuana Establishment Operating Permit issuance, the Marijuana Establishment agrees to provide to the Board of Health a copy of their Marijuana Establishment License, annual renewals thereafter, any changes to the business as described in 935 CMR 500.104 and current written operating procedures required in 935 CMR 500.105.
18. As a condition of Marijuana Establishment Operating Permit issuance, the Marijuana Establishment agrees to notify the Board of Health orally and in writing within 24 hours of a visit to the premises or request for information by any representative of the Cannabis Control Commission acting in an official capacity. The Marijuana Establishment shall provide the Board of Health with any reports, written or electronic correspondence, or information from the Cannabis Control Commission on demand or, in any case, within five (5) business days after receipt by the Marijuana Establishment.
19. No applicant is permitted to hold a common victualler license or food service permit issued by the Board of Health for on-premises food consumption without notice to the Select Board, the ARB, and the Board of Health prior to the filing of their application to ensure compliance with those bodies.
20. Applicants who wish to prepare or sell edible MIPs at their Marijuana Establishment must undergo the Board of Health plan review process for food establishments prior to beginning operations. All edible MIPs shall be prepared, handled and stored in accordance with the requirements of 105 CMR 590.000: Minimum Sanitation Standards for Food Establishments at all times during operation.
21. No applicant is permitted to be a Massachusetts lottery dealer.
22. A separate Marijuana Establishment Operating Permit is required for each retail establishment selling marijuana and/or marijuana products and for each location, not being the same address as the retail establishment, where the Marijuana Establishment is approved by the Cannabis Control Commission to cultivate marijuana or prepare MIPs.
23. The Marijuana Establishment Operating Permit shall be displayed in an open, conspicuous place in view of the public.
24. Permit to Operate a Marijuana Establishment Holders (“Marijuana Establishment Operating Permit Holders”) shall at all times ensure the buildings, structures, physical facilities, vehicles, fixtures and equipment of the Marijuana Establishment are being maintained in a sanitary condition, in good repair, free from defects, and in every way fit for the use intended so as to prevent the occurrence of any nuisance conditions or other conditions which may endanger or impair health, safety or wellbeing of an occupant or the general public.

25. Applicants shall develop a plan, subject to review and approval by the Board of Health, for the safe and secure storage and disposal of all marijuana waste and refuse. The plan shall ensure all marijuana waste and refuse is rendered unusable and is disposed of in accordance with applicable law.
26. Marijuana Establishment Operating Permit Holders shall at all times be subject to periodic, unannounced inspections conducted by the Board of Health. Denial of access to the Board of Health may be grounds for immediate suspension or revocation of a Marijuana Establishment Operating Permit.
27. Issuance and maintaining a Marijuana Establishment Operating Permit shall be conditioned on the Marijuana Establishment Operating Permit Holder's compliance with any orders issued by the Board of Health to correct any deficiencies or violations identified during an inspection.
28. Marijuana Establishment Operating Permit Holders agree that a Marijuana Establishment will not open for business before 8:00 am and shall close no later than 12:00 am Monday through Saturday, before 10:00 am and shall close no later than 12:00 am Friday and Saturday, and before 10 am and shall close no later than 7 pm on Sunday.

E. **Dispensary Agent Permit:**

1. No Marijuana Establishment Agent or person shall sell or otherwise distribute marijuana or marijuana products at a Marijuana Establishment within the Town of Arlington without first obtaining a Marijuana Establishment Agent Permit issued annually by the Board of Health.
2. As part of the Marijuana Establishment Agent Permit application process, the applicant will be provided with this regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and understands that under this regulation they are responsible for complying with all local and state regulations pertaining to the operation of the Marijuana Establishment. Specifically, a violation of any provision of 935 CMR 500.000 or other applicable state regulation constitutes a violation of this regulation, which may be enforced by the Board of Health.
3. Each applicant is required to provide proof by means of a valid government-issued photographic identification containing the bearer's date of birth that the applicant is 21 years old or older.
4. Each applicant is required to provide proof of a current Marijuana Establishment Agent registration, issued by the Cannabis Control Commission, before a Marijuana Establishment Permit can be issued.
5. Each applicant is required to provide the Criminal Offender Record Information (CORI) report submitted on their behalf to the Cannabis Control Commission by the Marijuana Establishment.

6. Issuance and maintaining a Marijuana Establishment Agent Permit shall be conditioned on an applicant's on-going compliance with this regulation, the requirements set forth in 935 CMR 500.000, a violation of which constitutes a violation of this regulation, which may be enforced by the Board of Health, as well as all other current Commonwealth of Massachusetts requirements and policies regarding marijuana sales.
7. A Marijuana Establishments Agent Permit will not be renewed if the Marijuana Establishment Agent Permit Holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding Marijuana Establishment Agent Permit suspensions.
8. Marijuana Establishment must present their Cannabis Control Commission Registration Card and Marijuana Establishment Permit to any law enforcement officer or municipal agent who questions the agent concerning their marijuana-related activities.
9. The fee for a Marijuana Establishment Agent Permit shall be determined by the Board of Health annually.

F. Incorporation of 105 CMR 500.000 and 105 CMR 590.000:

The manufacture of all edible marijuana products shall be conducted in a state-licensed marijuana manufacturing facility and in accordance with all applicable state regulations. All Marijuana Establishments, including those that develop or process edible marijuana products, shall comply with the sanitary requirements in 105 CMR 500.000: Good Manufacturing Practices for Food. All edible products shall be prepared, handled, and stored in compliance with the sanitation requirements in 105 CMR 590.000: Minimum Sanitation Standards for Food Establishments.

G. Out-of-Package Sales:

The sale or distribution of edible marijuana products in any form other than an original factory-wrapped package is prohibited, including the repackaging and sale of an edible marijuana product for retail sale.

H. Self-Service Displays:

All self-service displays of marijuana products are prohibited.

I. Vending Machines:

All vending machines containing marijuana products are prohibited.

J. Marijuana Accessories:

Marijuana accessories, as defined herein, shall only be sold in marijuana establishments and adult-only tobacco stores.

K. Compliance with All Laws:

1. All cultivation, processing, manufacturing, delivery, sale and use of marijuana shall be conducted in compliance with all state and local laws, ordinances, regulations or policies. These shall include, where applicable but not limited to, compliance with Chapter 344 of the Acts of 2016, as amended by Chapter 55 of the Acts of 2017, 935 CMR 500.000, secondhand smoke laws and regulations, electronic cigarette laws and regulations, nuisance laws and regulations and all requirements associated with zoning and other local permitting. Violation of any such law, not including federal laws relating to marijuana, shall constitute a violation of this regulation and be subject to the fines and penalties described herein. Nothing in this regulation give any immunity under federal law or poses an obstacle to federal enforcement of federal law.
2. A marijuana establishment shall submit a security plan for review to the Arlington Board of Health detailing all security measures taken to ensure patient, consumer and community safety and eliminate unauthorized access to the premises.
3. The Arlington Board of Health, in consultation with the Arlington Police Department, and other town officials and departments may set limitations on the hours of operation of any marijuana establishment.
4. The Arlington Board of Health may require the distribution of additional educational materials in marijuana establishments.

L. Financial Security:

Marijuana Establishment Operating Permit Holders shall provide a non-cancellable surety bond or other form of surety approved by the Board of Health to cover the cost of removal, closure and/or clean-up in the event the Town must remove, close and/or clean-up the Marijuana Establishment. The amount and form of the surety bond or any other form of surety shall be determined by the Board of Health, but in no event shall exceed more than 150 percent of the cost of removal, closure and/or clean-up. The Marijuana Establishment Operating Permit Holder shall submit a fully inclusive estimate of the costs associated with removal, closure and/or clean-up, prepared by a qualified Hazardous Waste Remediation Contractor.

M. Violations:

It shall be the responsibility of the Marijuana Establishment Operating Permit Holder and the Marijuana Establishment Agent Permit Holder to ensure compliance with all sections of this regulation pertaining to his or her distribution and/or cultivation of marijuana and/or marijuana products. The violator shall receive:

1. In the case of a first violation, a fine of three hundred dollars (\$300.00).
2. In the case of a second violation within 36 months of the date of the current violation, a fine of three hundred dollars (\$300.00) and the Marijuana Establishment Operating Permit or Marijuana Establishment Agent Permit shall be suspended for seven (7) consecutive business days.
3. In the case of three or more violations within a 36 month period, a fine of three hundred dollars (\$300.00) and the Marijuana Establishment Operating Permit or Marijuana Establishment Agent Permit shall be suspended for thirty (30) consecutive business days.
4. The Board of Health reserves the right to permanently revoke a Marijuana Establishment Operating Permit, Marijuana Establishment Agent Permit for cause.
5. If a permit holder has obtained a permit or license from any other licensing or permitting authority within the Town of Arlington, the Board of Health shall notify such authority in writing of any violations of this regulation
6. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Marijuana Establishment Operating Permit and/or Marijuana Establishment Agent Permit.
7. In addition to the monetary fines set above, any Marijuana Establishment Operating Permit Holder or Marijuana Establishment Agent Permit Holder who engages in the sale or distribution of marijuana or marijuana products while his or her Marijuana Establishment Operating Permit or Marijuana Establishment Agent Permit is suspended may be subject to the suspension and/or revocation of all Arlington-issued permits and licenses.
8. The Board of Health shall provide notice of the intent to suspend or revoke a Marijuana Establishment Operating Permit, or Marijuana Establishment Agent Permit, which notice shall contain the reasons therefore and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The Marijuana Establishment Operating Permit Holder, Marijuana

Establishment Agent Permit Holder, or other involved party shall have an opportunity to be heard at such hearing. At the conclusion of the hearing, the Board of Health shall vote to suspend or revoke the Marijuana Establishment Operating Permit, or Marijuana Establishment Agent Permit if cause for such action is found. All involved parties shall be notified in writing of the Board of Health's decision within seven (7) days of the hearing. For purposes of such suspensions or revocations, the Board of Health shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All marijuana and marijuana products shall be removed from the retail establishment upon suspension of the Marijuana Establishment Operating Permit. Failure to remove all marijuana and marijuana products shall constitute a separate violation of this regulation.

N. Enforcement

1. Enforcement of this regulation shall be by the Arlington Board of Health or its designated agent(s).
2. Any resident who desires to register a complaint pursuant to this regulation may do so by contacting the Arlington Board of Health or its designated agent(s) and they shall investigate.

O. Variances:

1. A variance from this regulation may be requested in writing, to the Arlington Board of Health. A variance may be granted by the Arlington Board of Health after a hearing at which time the applicant establishes the following:
 - a. Strict enforcement of this regulation would do manifest injustice; and
 - b. The granting of a variance shall not in any way impair the public health and safety or the environment.
2. The Board of Health may impose any conditions, safeguards and other limitations on a variance when it deems it appropriate to protect the public health and safety or the environment.

P. Severability:

If any provision of this regulation is declared invalid or unenforceable, all other provisions shall not be affected thereby but shall be in full force and effect.

Q. Effective Date:

This regulation shall take effect immediately upon passage by the Arlington Board of Health.

This regulation shall take effect on _____, 2018.

1. _____ 2. _____
Marie Walsh-Condon, MD Kenneth Kohlberg, JD, MPH

3. _____
Kevin Fallon, DVM